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SUBJECT: RAHMON CALLS FOR THE TRANSFER OF ARREST POWER FROM THE PROSECUTORS TO THE COURTS BY 2010

REF: Dushanbe 395

¶1. (SBU) Summary: In his annual speech to Parliament, President Rahmon called for the transfer by 2010 of the power to issue preliminary arrest warrants from the prosecutors to the courts. Our contacts are uncertain whether this step will make much difference in the balance of power between the traditionally strong prosecutors and weak courts. Nevertheless, implementation will require significant work to create an independent judiciary, train prosecutors and judges, and institute serious anti-corruption measures to ensure viability. End summary.

¶2. (U) The transfer of powers to issue arrest warrants is one of the key elements of ongoing reform of Tajikistan's Criminal Procedure Code (reftel). While President Rahmon ordered a new draft Code to be prepared by September 2008, there has been speculation about when powers would in fact be transferred to the courts. We discussed the impact of this transfer of power with our contacts who work in the justice sector.

¶3. (SBU) Nigina Bakhrieva, Head of the Bureau of Human Rights and Rule of Law, a local NGO, told Emboff that the President called for this measure in response to pressure from the international community and obligations to comply with the International Covenant on Civil and Political Rights. At the same time, Bakhrieva said that additional measures are required to bring Tajikistan's Criminal Procedure Code into line with international standards. For instance, the current Code allows a prosecutor to order someone to be detained after he or she has been acquitted pending appeal. In a case of prosecutor malfeasance, only the prosecutor's office may investigate one of its own.

¶4. (SBU) Zulfikor Zamonov, a local lawyer with the American Bar Association, said that the transfer of power to the courts is a positive development and should have occurred a long time ago. He added that the transfer of power would not make a big difference unless there is broader criminal justice system reform. Both the prosecutors and courts will need the support of the international community to effect the transfer of power and create a balanced justice system. (Note: The Bureau of International Narcotics and Law Enforcement is funding technical assistance to the Ministry of Justice to revise the Criminal Procedures Code. End note.)

¶5. (SBU) Kanoat Khamidova, Director of the Judicial Training Center at the Council of Justice, considers the transfer of power a very important step for Tajikistan's justice system. She said that the government and the international community have to take the initiative and prepare judges, prosecutors, defense lawyers, and civil society to work within the new system that the revised Code will create. In order to build a functional system, she said it would be useful for both prosecutors and judges to study the experience of countries where similar adjustments between the prosecution and the courts took place.

¶6. (SBU) Shakarbek Niyatbekov, Manager of the Swiss-funded Access to

Justice and Judicial Reform Project, commented that the courts must have the power to issue warrants in order to have impartial trials. He said the fact that President Rahmon is calling for the transfer of power is simply to show the international community that he is doing something practical, not just making speeches. He added that the country has no experience in adversarial proceedings before impartial courts. The transfer of power could be an avenue for growth of corruption. Furthermore, prosecutors will resist the growth of corruption. Furthermore, prosecutors will resist the transfer as they would lose many privileges. Echoing Khamidova, he said that the international community has to support training and seminars for judges and defense attorneys in order to prepare them for the different justice system. (Note: INL is funding an extensive project to train prosecutors and judges including the changes that will be wrought by the transfer of arrest authority. End note.)

¶17. (SBU) Comment: While we would prefer to see a more rapid transfer of arrest authority to the courts it appears that under Tajikistan's new Criminal Procedure Code, the long-anticipated transfer will not begin until 2010. While we and other donors are supporting criminal justice reform with programs that will prepare lawyers, prosecutors, judges, defense attorneys, and civil society for the new Code, it still remains to be seen whether the Tajik authorities are truly committed to reform. End comment.

JACOBSON